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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,101	04/01/2004	Michael D. Brown	Brown.M-01	2868
22197	7590	08/24/2005	EXAMINER	
GENE SCOTT; PATENT LAW & VENTURE GROUP 3140 RED HILL AVENUE SUITE 150 COSTA MESA, CA 92626-3440			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/817,101

Applicant(s)

BROWN, MICHAEL D.

Examiner

Matthew J. Kasztejna

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Notice of Amendment***

In response to the amendment filed on June 10, 2005, amended claims 1, 3 and 5; canceled claims 2, 4 and 6-10; and new claims 11-12 are acknowledged. The current rejections under 35 USC § 103 are withdrawn. The following new grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 5,148,804 to Hill et al. in view of U.S. Patent No. 4,688,572 to Hubbard et al. in further view of U.S. Patent No. 1,247,222 to Cauffman.

**In regards to claim 1**, Hill et al. disclose a facial harness comprising: a pair of fabric pocket panels 30 joined at a front edge of the panels by a central region 32 so that when in contact with the chin the pocket panels are in contact with sides of the face; the pocket panels sized so that an upper edge of each of the fabric panels extends from adjacent the mouth, across one of the cheeks to one of the ears, a lower edge of each of the fabric panels extending from the chin to the base of the mandible; a means 35 for holding the apparatus in place on the face; at least one pocket in each of the pocket panels; and at least one hot-cold pack 44 held within each of the pocket panels

Art Unit: 3739

(see Figs. 1 and 10d). However, Hill et al. is silent with respect to an elastic strap which joins the pockets together and comes into contact with the chin. Hubbard et al. teach of an analogous thermal pack having an elastic section 22 located between pockets 12 and 28 (see Col. 3, Lines 22-32). It would have been obvious to one skilled in the art at the time the invention was made to include an elastic section in the apparatus of Hill et al. in order to permit the wearer to freely move about without movement of the thermal pack and to prevent unnecessary temperature treatment of the chin as taught by Hubbard et al.

Furthermore, Hill et al. and Hubbard et al. are silent with respect to the facial harness being secured below the mouth, wherein the upper edge of each of the panels is directed linearly from the below the mouth to immediately above an ear, and the lower edge of each pocket is directed divergently from below the chin. Cauffman teaches of an analogous facial harness which extends from below the chin and extends from below the mouth to immediately above the ear and from below the chin to the base of the mandible. Also, the edges further have coextensive straps for fastening the harness around the head as a means for holding the apparatus in place on the face (see Fig. 1). It would have been obvious to one skilled in the art at the time the invention was made to secure the harness of Hubbard et al. and Hill et al. from below the mouth to allow for greater comfort to the patient as taught by Cauffman and is well known in the art.

**In regards to claim 3**, Hill et al. disclose a facial harness wherein the straps provide a strap fastening means for joining the straps securing the apparatus on the head (see Col. 6, Lines 25-42).

Claims 5 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,148,804 to Hill et al. in view of U.S. Patent No. 4,688,572 to Hubbard et al. in further view of U.S. Patent No. 1,247,222 to Cauffman in further view of U.S. Patent No. 5,119,812 to Angelo.

**In regards to claims 5 and 11-12,** Hill et al., Hubbard et al. and Cauffman disclose a facial harness but are silent with respect to a hot-cold pack being placed in a forward pocket in a horizontal position and a hot-cold pack being placed in a rearward pocket in a vertical position. Angelo teaches of an analogous facial harness wherein the mask is formed with a plurality of spaced vertical and horizontal seams which facilitate shaping of the mask to conform to the patient's face even when the mask is frozen (see Fig. 1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to include a plurality of vertical and horizontally spaced pockets in the apparatus of Hill et al., Hubbard et al. and Cauffman to provide an improved mask for providing thermal treatment to a patient's face as taught by Angelo.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3739

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

MK

8/9/05



LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700